IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 192/7/JPR/2020

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Laxmi Narian Yadav
S/o Sh. Khem Chand,
R/o H-33/39, Phase-I. DLF,
Village-Sikanderpur Ghosi,
Gurugram, Haryana

...Financial Creditor

VERSUS

Maha Mayay Metals LLP,
R/o G106-107, RIICO Industrial Area,
Khushkhera, Tehsil-Tijara, District-Alwar,
Rajasthan-301707

...Corporate Debtor

For Petitioner (s)	:	Abhisar Bhanu, Adv.
For Respondent (s)	:	Vijendra Singh, Adv.

Sd/-

ORDER PRONOUNCED ON: - 21.12.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application is filed by Shri Laxmi Narain Yadav, ('Applicant'), claiming to be a Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor.

2. The Applicant / Financial Creditor was a partner in the registered partnership firm carrying out business in the name of "M/s Mahamayay Steels" (hereinafter referred as "partnership firm") since 08.12.2010. The aforesaid firm came to be registered as a Limited Liability Partnership in the name of "M/s Mahamayay Metals LLP" on 02.09.2020 having LLPIN AAT-6401, which is the Corporate Debtor in the present matter.

3. The Corporate Debtor is in the business of manufacturing and trading of MS Ignots, Basic metals and other incidental / ancillary services and is duly registered with the Registrar of Companies, Jaipur, bearing LLP No. AAT-6401. The registered address of the firm is G-106-107, RIICO Industrial Area, Khushkhera, Tehsil-Tijara, District-Alwar, Rajasthan-301707.

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4. It has been submitted by the Applicant/Financial Creditor that he was a partner in the registered partnership firm carrying out business in the name of "M/s Mahamayay Steels", and that the business of the firm was being carried out under the indenture of the partnership deed dated 08.12.2010. It is submitted that as per the said deed, there were total 03 partners in the firm i.e. Mr. Ashoo Yadav, Mr. Aman Yadav and the applicant (Mr. Laxmi Narain Yadav). The applicant and Shri Ashoo Yadav, both partners entered into one retirement cum admission deed dated 1st April, 2019 with Shri Aman Yadav, the existing partner and Shri Sunil Kumar, the new partner. Under the said Retirement-cum-Admission Deed, for full and final settlement of the properties, capital, assets, credit, goodwill and liabilities, an amount of Rs. 2,01,56,757.20/- came into the share of the applicant. Further the Partners of the firm were having long standing business relationship with the applicant and required funds for expanding the operations of the firm. Therefore, partners of the firm requested the applicant to grant the amount of Rs. 2,01,56,757.20/- (Rupees Two Crore One Lac Fifty-Six Thousand Seven Hundred Fifty-Seven and Twenty Paise) as loan to the partnership firm, at an interest rate of 12% per annum. It was also submitted by the Applicant that the partners of the firm promised that the loan amount will

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be repaid in totality by 31.12.2019. In the Clause 2 of the aforesaid retirement cum admission deed, it was specifically mentioned that: -

> "*2. Valuation and estimation of accounts to the mutual satisfaction of all the parties hereto have been made of all the properties, assets, credits and effect of the said business of including the goodwill and the liabilities thereof as on the day of 31st March, 2019 in full and final settlement of the accounts of the Retiring Partners in the Partnership firm shall stand credited in the books of the firm to the loan account of retiring partners and this loan amount shall be paid to the retiring partners within a period of 9 months i.e. 31st December, 2019. Further, interest @ 12% p.a. shall be payable on this loan amount of retiring up to the date of payment.*
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> ………………
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> *4. Upon signing of this deed as specified in point No. 2, the capital or retiring partner shall become unsecured loan and will be dealt as an arm length transaction. Thereafter, the retiring partners after their retirement shall not have any right or interest in the firm, in any manner whatsoever except get payment of their loan amount. The retiring partner shall not be related with the business of firm and shall not represent as a partner / stakeholder to any third party.*"

5. As per the terms of the retirement cum admissions deed, partnership firm was under an obligation to repay the loan amount on due date i.e., 31st December, 2019 and also liable to pay interest @12% p.a. on the said amount as on 31.12.2019. However, the firm failed to honour its obligations.

6. On 06.01.2020, a letter was written by the partnership firm to the applicant stating that it was liable to pay the loan amount with interest to the applicant on 31.12.2019 and further mentioned that due to some financial struggle, the payment got delayed. Thereafter, the loan amount with interest of Rs. 2,19,79,149/- (i.e., Rs. 2,01,56,757/- as principal + 18,22,392/- as interest) was also accepted. In the said letter the partnership firm sought time

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to make the complete payment to the Applicant. However, two post-dated cheques (PDCs) were issued by the firm as a part payment of the loan amount and interest. The details of the cheques are given below: -

i. *Cheque No. 072363 dated 30.03.2020 an amount of Rs. 20,00,000/- only.*
ii. *Cheque No. 756984 dated 30.03.2020 an amount of Rs. 5,00,000/- only.*

7. However, the post-dated cheques issued by firm when presented for clearing by the applicant got dishonoured. The Corporate Debtor has continuously defaulted on the payment of the financial debt. The Financial Creditor submits that total outstanding financial debt as on date of filing of the petition, along with interest, amounts to Rs. 2,40,79,869/-.

Part IV

Particulars of Financial Debt

1.	Total amount of debt granted Date(s) of Disbursement	Amount of Debt Granted: Principal Amount: Rs. 2,01,56,757.20/- Amount of Rs. 2,01,56,757.20/- Date: 01.04.2019.

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2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed: Rs. 2,40,79,869/- Principal Amount: Rs. 2,01,56,757.20/- Interest : Rs. 39,23,112/- Date from Which Debt Fell Due: 31.12.2019

8. The Corporate Debtor has filed reply on 20.01.2021 and stated that due to COVID-19 pandemic situation, where the whole world was affected badly, Corporate Debtor also suffered huge losses and was unable to start/continue his business. Further, the Corporate Debtor submitted that the amount became payable in January-2020 and cheques were issued in March but due to COVID-19 pandemic situation the partnership firm was not in a situation to pay the amount therefore, the cheques could not be honoured. The Corporate Debtor further submitted that they already informed the Applicant that the due amount will be paid as and when funds will be available.

9. It is observed that the matter came to be filed by the Applicant on 27.11.2020 claiming to be a Financial Creditor under Section 7 of the Code for initiation of CIRP of the Corporate Debtor. The Partnership firm came to be registered as a Limited Liability Partnership on 02.09.2020. Although the debt became due on 31.12.2019 when the Corporate Debtor was a partnership firm, the Corporate Debtor preferred an e-mail to the Applicant on 05.11.2020, which has been filed as Annexure 10 of the Application,

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requesting for time to pay the aforementioned debt. The Corporate Debtor vide the aforesaid e-mail acknowledged the debt of the Applicant/Financial Creditor which shows clear default on part of the Corporate Debtor. In view of the aforesaid acknowledgement of debt and date of filing of application being 27.11.2020, it is seen that the debt is not time barred and the application is filed within limitation.

10. The Applicant has named one Mr. Vikram Bajaj with Registration No. IBBI/IPA-002/IP-N00003/2016-17/10003, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from IBBI website and nothing adverse is found on record.

11. Consequences of initiation of CIRP shall be inter-alia as follows:

(i) The Insolvency Resolution Professional proposed by the Applicant Mr. Vikram Bajaj is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for

Sd- Sdclaims from the creditors of Corporate Debtor and collation of the same shall be done.

(ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in accordance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Tribunal about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

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(iv) In terms of Section 7 of IBC, 2016, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Tribunal to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.

12. In the circumstances, CP No. (IB) 192/7/JPR/2020 is admitted.

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SH. RAGHU NAYYAR,
TECHNICAL MEMBER

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SH. DEEP CHANDRA JOSHI
JUDICIAL MEMBER